IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7531 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

J D CHHATBAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7531 of 1990

MR PM THAKKAR for Petitioner No. 1

GOVERNMENT PLEADER for Respondent No. 1

RULE SERVED for Respondent No. 2-3

NOTICE SERVED for Respondent No. 3

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 04/04/2003

ORAL JUDGEMENT

This petition is filed by the petitioner challenging the seniority list published by respondent No.3 dated 14-6-1988 fixing seniority of the petitioner and the order passed thereon, without affording him

deemed date benefit. The petitioner has also prayed for the directions to the respondents to grant the petitioner deemed date seniority in the cadre of Agricultural Supervisor on or after 5-9-1959 and before 8-9-1959 and thereupon to publish final seniority list of the Agricultural Supervisors. The petitioner has further prayed for the direction to the respondents to consider the case of the petitioner and to give him promotion to the post of Agricultural Officer and also to the post of Assistant Director of Agriculture with retrospective effect treating the seniority of the petitioner in the cadre of Agricultural Supervisor on or after 5-9-1959 and before 8-9-1959 and to grant all consequential benefits to the petitioner including all arrears of pay, stepping-up, deemed date seniority in the cadre of Agricultural Officer and Assistant Director of Agriculture etc.

2. It is the case of petitioner that the petitioner was initially appointed to the post of Agricultural Assistant Grade-II on 21-3-1956 and he was promoted to the post of Agricultural Supervisor on 20-10-1961. It is further stated that the petitioner had passed the required departmental examination in the year 1971 and under the channel of promotion the petitioner was entitled for being considered for promotion to the post of Agricultural Officer and thereafter to the post of Assistant Director of Agriculture.

3. It was further stated in the petition that the respondent No.3 has published Provisional Seniority List for the persons working in the cadre of Agricultural Supervisor by Circular dated 18-7-1958 and in the said provisional seniority list the seniority of the petitioner was not properly reckoned and hence the petitioner raised objection thereto by making representation dated 12-5-1978. It was stated in the said representation that the petitioner was being eligible for deemed date benefit in the cadre of Agricultural Supervisor and he should have been placed at Serial No. 126 instead of Serial No. 558. It was further stated that after publication of the provisional seniority list, the respondent authorities had proposed to offer promotion to several persons in the next higher cadre of Agricultural Officer and since the seniority of the petitioner was not properly shown, the petitioner's case was not proposed to be considered for promotion. The petitioner therefore moved another representation on 30-5-1978. The petitioner has not received any reply to the said representation.

4. The petitioner has further stated that the Final Seniority List of the Agricultural Supervisors showing position as on 1-1-1978 was published vide circular letter dated 14-6-1988. It was stated by the petitioner that he was appointed to the post of Agricultural Supervisor on 20-10-1961 and was entitled to deemed date benefit being promotee and such deemed dates were given to several other persons. However, the petitioner was denied the said benefit. The petitioner therefore was constrained to file the present petition before this Court.

5. The main grievance of the petitioner was that persons junior to the petitioner were granted deemed date benefit and were promoted to the next higher posts. However, the petitioner was not granted such benefit. It was therefore contended by the petitioner that the impugned action of the respondent authorities in not considering the case of the petitioner for promotion and not giving promotion to the petitioner at the relevant time when his juniors came to be promoted, was arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution of India. It was also urged by the petitioner that since the petitioner was not offered proper placement in the final seniority list and his junior persons have been shown at higher place to him, the said seniority list was illegal, arbitrary, discriminatory, null and void and hence it was required to be quashed and set aside.

6. On notice being issued by this Court, the respondents had appeared through their advocate. An affidavit-in-reply was filed by the Joint Director of Agriculture wherein it is stated that the petitioner was eligible for seniority in the cadre of Agricultural Supervisor only when his C.R. became upto the mark. Considering his C.R., the petitioner was promoted on 20.10.1961 and his representation was duly taken into consideration at the time of preparation of seniority and due to his adverse C.R. he was not considered fit for promotion as Agriculture Supervisor prior to 20.10.1961. It was further stated that the deemed date given to the persons mentioned in the petition by the petitioner was in accordance with the rules prescribed. It was further stated that though Shri DG Rathod was promoted on 3-6-1962, i.e. after the promotion given to the petitioner, his Confidential Report was upto the mark and therefore he was assigned the deemed date of 8-9-1959 by considering the date of appointment as Agricultural Assistant, whereas in case of the petitioner his C.R. was not upto the mark and therefore he was not eligible

for getting the benefits of deemed date.

7. Learned Advocate Mr. PM Thakkar is appearing in this matter on behalf of the petitioner. Learned AGP, Ms. Manisha Lavkumar is appearing on behalf of respondent No.1 and though the Rule was served on the respondents No. 2 and 3, no appearance was filed on their behalf. However, the respondents No. 2 and 3 being Governmental authorities, Ms. Manisha Lavkumar has referred to and relied upon the affidavit-in-reply filed by the respondent No.3. She has submitted that there is no question of granting deemed date benefit to the petitioner unless and until the petitioner's C.R. became upto the mark. The petitioner's case was considered and promotion was given to him only after his C.R. became upto the mark. The grievance raised by the petitioner to the effect that his juniors were promoted and placed ahead of him in the seniority list did not seem to be just and proper in view of the fact that in other cases the CRs were not objectionable whereas in the petitioner's case it was not considered to be upto the mark. In this view of the matter, this Court is of the view that there is no irregularity or illegality committed by the respondents in not granting the deemed date benefit to the petitioner. Since there is no substance or merits in the petition and the action of the respondent authorities is neither assailable or vulnerable in the petition under Article 226/227 of the Constitution of India, the same cannot be held as unjust, improper or unlawful. The petition is, therefore, dismissed. Rule is discharged with no order as to costs.

rmr. [K.A. Puj, J.]